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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,405	04/19/2004	Nozomi Harada	2004-0607A	9898

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WENDEROTH, LIND & PONACK, L.L.P.  
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WASHINGTON, DC 20006-1021

EXAMINER
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WEIER, ANTHONY J .

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/826,405

Applicant(s)

HARADA ET AL.

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of Group I in the reply filed on 11/17/06 is acknowledged. The traversal is on the grounds that because the two inventions have the same classification, same do not require a different field of search. This is not found persuasive because though each invention is classified in a single class and subclass, the search for each does not end there. The searches encompassed by each invention are not fully commensurate with one another. Moreover, each invention would require a different search strategy.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite in that it is not clear whether or not the "main ingredients" include soybeans or soybean protein as specifically set forth in line 3.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1761

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-5 are rejected under 35 U.S.C. 102(a) as being anticipated by JP 2003235461 (JP '461) or JP 60-221042 (JP '042).

JP '461 discloses a textured protein containing soybean, casein, and water in the amounts as called for in the instant claims which is heated and extruded under pressure into the atmosphere wherein same swells and has the particular oil content and water absorbing capacity as called for in the instant claims (see claims).

JP '042 discloses a textured protein product containing soybean protein isolate, casein, and water wherein the proteins are present in a ratio as called for in the instant claims and extruded under pressure and heat (e.g. Brabender, see page 243) and resulting in an expanded product.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sander.

Sander discloses a texturized protein comprising a mixture of proteins (e.g. soy protein isolate and casein) is mixed with water and a starch component wherein same is expanded or puffed due to an extrusion step which includes pressure and heating (Abstract, col. 2, lines 25-31, 43-65; col. 3, lines 4-15; Examples). Since Sander calls for the product to be 50-70% protein, it is inherent that anything additionally added,

Art Unit: 1761

including the starch, would be less than, for example, 50% which meets the starch amount called for in claim 3. It is inherent that the product would contain less than 3% oil as no oil is added and the starch and protein components which are isolates are expected to contain no oil.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Waggle.

Waggle discloses a texturized and puffed protein product comprising soy protein and water/casein (via milk; see Abstract; col. 2, lines 26-63).

6. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Waggle.

Leidy et al discloses a texturized and puffed or expanded protein product comprising soy protein, casein and water wherein the soy protein and casein are within the ratio called for in claim 2 and said product further includes starch in an amount within the range called for in the instant claims (see Example 3). Due to the similarity in composition and expansion processing, it is expected that the product of Leidy et al would possess the particular water absorbing capacity called for in instant claims 3.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sander.

Art Unit: 1761

Sander is silent regarding the use of soybean protein and casein in the particular ratio as called for in the instant claims as well as the particular water absorbing capacity of the product. It should be noted that when Sander employs a 2<sup>nd</sup> protein other than a soy source, the ratio of soybean protein to the second protein falls within the ratio called for in the instant claims (see the Examples). Likewise, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the particular protein ratio as called for in instant claims 2 and set forth in the Examples of Sander with respect to casein when same is used as a secondary protein. In view of the similarities in processing, ingredients, and amounts employed between the claims and Sander (including Sander modified to include the ratio of soy protein to casein called for in claim 2), it is expected that such a texturized protein product would possess the particular water absorption characteristics called for in instant claims 4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

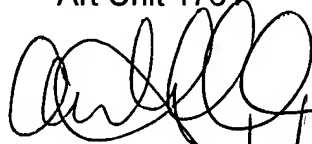
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
January 30, 2007

Anthony Weier  
Primary Examiner  
Art Unit 1761

  
1/30/07